IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 10566 of 2002
With
SPECIAL CIVIL APPLICATION No. 16820 of 2003

For Approval and Signature:

HONOURABLE MR. JUSTICE B.J.SHETHNA
HONOURABLE MR.JUSTICE MD SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MEMON MOHMED HABIB GULAM MOHAMED - Petitioner(s)
Versus
STATE OF GUJARAT & 4 - Respondent(s)

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Appearance :
MR IA PATEL for Petitioner(s) : 1,
MR DESAI, AGP for Respondent(s) : 1,
LAW OFFICER BRANCH for Respondent(s) : 2 - 3.
MR JB PARDIWALA for Respondent(s) : 2 - 3.
MR ASIM J PANDYA for Respondent(s) : 4,
NOTICE SERVED for Respondent(s) : 5,

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CORAM : HONOURABLE MR. JUSTICE B.J.SHETHNA

and

HONOURABLE MR.JUSTICE MD SHAH

Date : 19/06/2006

ORAL COMMON JUDGMENT

(Per : HONOURABLE MR. JUSTICE B.J.SHETHNA)

Both these petitions are filed by the petitioners who are the Judicial Officers, through their learned Counsel Shri I.A.Patel, who was not present when the matters were called out at about 12.35 pm. As per the endorsement made these matters are listed today for the 35th times at Sr.No.5 in today's Final Hearing Board. Therefore, after hearing learned Counsel Shri Pardiwala for the respondent – High Court and the learned AGP Shri Desai for the State of Gujarat, we have thought it fit to decide these cases on the averments made in the petition as well as the Reply Affidavit and the Rejoinder.

Both the Officers were on probation. From the Reply Affidavit filed in Special Civil Application No.10566 of 2002 it clearly appears from the confidential Report of the petitioner that his integrity was doubtful and mixing with the company of opposite sex. About diligence & industry he was found to be inactive, politeness and courtesy was found not good so as his relation with his colleagues. He was also not found interested in the office work. He was also not found punctual and regular. His treatment to the members of the Bar was rude so as with the litigating public. He was not in habit of discussing the law while deciding the matter. The Administrative Judge made the following remarks :

> “When I visited Surat, several persons made serious complaints regarding working of the delinquent. Such person should not be continued.”

The matter was initially placed before the Standing Committee on 7.5.2002 and subsequently it was placed in Chamber Meeting on 29.6.2002 and a decision was taken by the Full Court that the petitioner cannot be given appointment on long term basis in view of unsatisfactory performance.

An attempt was made in the petition to challenge the impugned order of termination on the ground that it was a stigmatic. However, the Hon'ble Supreme Court in the case of Governing Council of Kidwai Memorial Institute of Oncology, Bangalore v/s. Dr. Pandurang Godwalkar & ors., reported in (1992) 4 SCC 719 held that “When an appointment is made on probation, it pre-supposes that the conduct, performance, ability and the capacity of the employee concerned have to be watched and examined during the period of probation.” It has further held that “such employee is to be confirmed after the expiry of probation only when his service during the period of probation is found to be satisfactory.” As stated earlier, the Reporting Officer has found his integrity doubtful. His character was not good. He was found not interested in doing office work, not polite to the members of the Bar as well as litigating public and practically he has no knowledge

of law.

Under the circumstances, if the High Court has decided not to continue his probation period and terminated his service then no fault can be found with such decision. If such person is continued in service then it will bring dis-reputation to the Institution.

In view of the above discussion Special Civil Application No.10566 of 2002 is required to be dismissed.

This bring us to Special Civil Application No.16820 of 2003. From the Reply Affidavit of the respondent – High Court it is clear that the decision was taken not to continue the petitioner on probation and terminated his services on the basis of his Confidential Report, including the vigilance cases and the administrative complaint. The Reporting Officer clearly stated that his clarity of thought and expression was not good so as not diligent and industry. His knowledge of administrative capacity and interest in office working was practically Nil. The method of work was also poor and he was not interested in disposing of heavy and contested matters. Regarding the punctuality, it was stated that he was neither punctual nor regular. Regarding his knowledge of law also it was stated that his knowledge of law was not good so as method of writing. Under the circumstances, there was no

question of continuing him.

The Administrative Judge has opined, on 14.3.2002, as under :

> “It is brought to my notice that that Shri M.A. Shaikh, Judge, Labour Court, at present at Bhavnagar, was appointed on 22.10.1999 initially for a period of two years, which would expire on 21.10.2001. The said period has expired long back and it seems that he has still continued on the post till today. If the probation period is not extended then his services may automatically come to end. However, if required we may pass specific order in view of the report of the President, Industrial Court, he has not disposed of a single case by judgment in months August, November and December, 2001 and disposed of only two cases in October, 2001, and for remaining period also his disposal was very poor and that he was not sincere to his work, therefore, his probation is not extended and that his services come to end with immediate effect.”

The matter was thereafter placed before the Standing Committee on 7.5.2002 and thereafter before the Chamber Meeting and ultimately the Full Court has taken a decision to terminate his service in its meeting dated 29.6.2002.

From the above fact it cannot be said that the High Court has erred in discontinuing the services of the petitioners.

For the aforesaid reasons both these petitions are dismissed. Rule discharged in both the matters. No order as to costs.

(B.J.SHETHNA,J.)

(M.D. SHAH, J.)

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